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Tuesday, July 20, 2021

Mail and Email

Karen Lyons
Kellie Correia
Liberty Mutual Insurance - San Diego, CA
PO Box 515097
Los Angeles, CA 90051

Re: Client: Brandon Wichert
Your Insured: Brandon
Claim No. 23840824
Date of Loss: May 15, 2019

Dear Karen or Kellie:

I hope this finds you well. I am disappointed and concerned regarding your interest in conducting an independent and timely evaluation and investigation of this claim in order to provide the benefits that your insured, Brandon, is entitled to. Requesting information from his attorney that you can and should obtain independently is not the definition of conducting an independent and reasonable investigation. You cannot delegate the duties owed to the insured by Liberty Mutual to Brandon's counsel.

I provided you with the information that we have in our possession with the demand on October 20, 2020. On 11/2/20 and again on 11/20/20 I inquired as to the status of your investigation and evaluation. The only response I received was your claim that Oklahoma law did not apply (without supplying any authority in that regard), you were applying Missouri law, and that you were missing a "significant amount of relevant documentation".

It is my understanding that based on a review of the file that:

1. You have not contacted the workers' compensation carrier to obtain any medical records the workers' compensation carrier received from the medical providers.
2. You did not request the itemized payment ledger from the workers' compensation carrier (which was previously sent to you from my office).
3. You have not requested a recorded statement from you insured.
4. You have not requested your insured to execute an authorization to release medical information; despite that, I have enclosed one.

5. You have not cited any authority supporting your position that you may offset payments made by the workers compensation carrier (i.e, no duplicate payments) either under Oklahoma or Missouri law.¹
6. You have not cited any authority supporting your position that Oklahoma law does not apply under the following circumstances:
 - a. Employee (Brandon) hired in Oklahoma
 - b. Was sent to Tennessee from Oklahoma by the employer in a vehicle owned and operated in Oklahoma.
 - c. Benefits paid pursuant to the Oklahoma Workers Compensation Act – subrogation claim of \$71,782.12 asserted under Oklahoma Workers Compensation Act; this prevents a “duplicate payment” to the insured as you assert.
 - d. Wages paid to insured in Oklahoma.

36 O.S. §3636, and Oklahoma authority interpreting the statute, apply to the underinsured motorist policy. I suggest that you review *Pate v. MFA*, 1982 OK CIV APP 36, 649 P.2d 809 (due to overriding Oklahoma public policy, Oklahoma law applied where Arkansas residents on vacation in Oklahoma had med-pay claim barred under Arkansas, but not Oklahoma law); *Bohannon v. Allstate Ins. Co.*, 1991 OK 64, ¶17, 820 P.2d 787, which explains Oklahoma will apply law of place of contract unless other jurisdiction has a greater interest in having its law enforced or enforcement would violate Oklahoma public policy. The Supreme Court strongly approved of *Pate*. Finally, *Leritz v. Farmers Insurance Company, Inc.* 2016 OK 79, 385 P.3d 991 says a liberalization provision in all policies makes Oklahoma law apply to a foreign vehicle used in Oklahoma. Applying the facts to the applicable law in this case, clearly shows that Oklahoma law should apply to an Oklahoma resident (your insured).

Even if Missouri law applied, the same result would apply. Brandon would be entitled to be compensated for all damages he is “legally entitled to recover”, and no reduction or offset would be allowed for payments made by the workers compensation carrier. *Cano v. Travelers Ins. Co.*, 656 S.W.2d 266, 270 (Mo. 1983); *Douthet v. State Farm Mut. Auto. Ins. Co.*, 546 S.W.2d 156, 159 (Mo. 1977) (“The holdings in *Cameron*, *Galloway* and *Webb* that s 379.203 requires that coverage in the amounts required by the Safety Responsibility Law not be diminished by contractual limitation, absent express statutory authority therefor, govern the outcome of this case. It would violate the public policy expressed in s 379.203 to permit diminution of coverage by requiring credit for workmen's compensation payments. Hence, we hold that the policy provision requiring reduction of sums payable under the policy by workmen's compensation payments is void. Such holding is consistent with the decision in *Steinhaeufel v. Reliance Insurance Companies*, supra.”).

¹ Duplicate payments do not exist because the workers’ compensation carrier is paid the statutory amount it is entitled to recover (payments the carrier made) from any proceeds from the employer’s UM carrier, which prevents a duplicate payment to the insured. Furthermore, your position is contrary to the Missouri Supreme Court’s decision in *Cano*: “Travelers’ position on this point is defeated by *Douthet v. State Farm Mutual Automobile Insurance Co.*, 546 S.W.2d 156 (Mo. banc 1977). In *Douthet*, the uninsured motorist carrier undertook to deduct workers’ compensation payments received by the plaintiff. The terms of its policy, like the one before us, provided for such a deduction. This Court held that the provision violated § 379.203 and so was invalid. 546 S.W.2d at 159–60. The deduction of the workers’ compensation benefits was not permitted.” *Cano v. Travelers Ins. Co.*, 656 S.W.2d 266, 270 (Mo. 1983)

Liberty Mutual has vast resources; you have had ample time and opportunity to conduct a reasonable and through investigation as to coverage and damages. I once again request that you devote the time and resources necessary to evaluate this claim and to promptly pay your insured the benefits that he is entitled to which the policy and law require.

I will expect to receive your evaluation by July 30, 2021 or I will need to proceed with securing the uninsured motorist benefits Brandon is entitled to in front of a jury, and extracontractual damages as well. Thank you.

Respectfully,



Rick W. Bisher

RWB/rb

Enclosures

- Medical authorization
- Workers comp Subro printout (again provided)

AUTHORIZATION TO USE OR DISCLOSE PROTECTED HEALTH INFORMATION

Patient Name: Brandon Wichart
 Address: 8510 Red Creek Springs Rd
West pueblo, CO. 81005

Social Security #: 443-98-8880
 Date of Birth: 01-19-89

I hereby authorize the use or disclosure of the Protected Health Information described below to be provided to or obtained by the following:

PHI Information to be disclosed to:

Individual/Facility to Disclose PHI

Liberty Mutual Insurance - San Diego, CA
 P.O. Box 515097
 Los Angeles, CA 90051

Information authorized for use or disclosure, or to be obtained.

All medical information concerning this patient.

- ☐ Medical information and billing w/CPT codes of this patient compiled between _____ to _____
- ☐ Only: Limited to _____

The above information will be obtained, used or disclosed for Legal purpose(s) only

I understand:

- I may revoke this authorization at any time, in writing, except revocation will not apply to information already used or disclosed in response to this authorization. I may revoke this document by presenting my written revocation as provided in the Notice of Privacy Practices. Unless revoked or otherwise indicated, the automatic expiration date will be one year from date of signature.
- I release the entities listed above, their agents and employees from any liability in connection with the use or disclosure of the protected health information covered by this authorization. The entity authorized to disclose the information will not be compensated by the recipient for disclosure, except for the cost of copying and mailing as authorized by law.
- Information used or disclosed pursuant to this authorization may be subject to redisclosure by the recipient and no longer protected by law. However, the recipient may be prohibited from disclosing substance abuse information under the Federal Substance Abuse Confidentiality Requirements.
- I have the right to inspect the health information to be released and I may refuse to sign this authorization.
- Unless the purpose of this authorization is to determine payment of a claim for benefits, the requesting entity will not condition the provision of treatment or payment for my care on my signing of this authorization.

I understand that my medical information may indicate that I have a communicable or venereal disease which may include, but is not limited to, diseases such as hepatitis, syphilis, gonorrhea, or the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome. (AIDS). I further understand that my medical information may indicated that I have or have been treated for psychological or psychiatric conditions or substance abuse.

Brandon Wichart

Signature of Patient or Legal Representative

 Date

 Description of Legal Representative's Authority

 Expiration Date of Authorization

NOTICE OF RIGHTS: Information in your medical record that you have or may have a communicable or venereal disease is made confidential by law and cannot be disclosed without your permission except in limited circumstances including disclosure to persons who have had risk exposures. Disclosure pursuant to an order of the court or Department of Health, disclosure amount health care providers or disclosure for statistical or epidemiological purposes. When such information is disclosed, it cannot contain information from which you could be identified unless disclosure of that identifying information is authorized by you, by an order of the court or the Department of Health or by law. (current as of 03/17)



ARGO GROUP

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PAYMENT INQUIRY BY CLAIM NUMBER

Brandon Wichert v. Review Windows

Run By - D40AMK ON 08-SEP-20

Claim Num : 40-213624

Payment Code : 1 INDEMNITY

Payment Description : ALL

Download Excel

#	Chk/CR Num	Tran Dt	Payee/Payer Name	Amount Paid	Period Covered	TC	CHKTYPE	TP	PD	WKS	DAY
1	4034471	06/03/2019	BRANDON J WICHERT	\$1,214.80	05/20/2019 06/02/2019	11	I	1 - INDEMNITY	TT - TEMPORARY TOTAL DISABILITY BENEFITS	2	0
2	4034777	06/06/2019	BRANDON J WICHERT	\$607.40	06/03/2019 06/09/2019	11	A	1 - INDEMNITY	TT - TEMPORARY TOTAL DISABILITY BENEFITS	1	0
3	4035395	06/13/2019	BRANDON J WICHERT	\$607.40	06/10/2019 06/16/2019	11	A	1 - INDEMNITY	TT - TEMPORARY TOTAL DISABILITY BENEFITS	1	0
4	4035915	06/20/2019	BRANDON J WICHERT	\$607.40	06/17/2019 06/23/2019	11	A	1 - INDEMNITY	TT - TEMPORARY TOTAL DISABILITY BENEFITS	1	0
5	4037940	07/16/2019	BRANDON J WICHERT	\$1,214.80	07/04/2019 07/17/2019	11	I	1 - INDEMNITY	TT - TEMPORARY TOTAL DISABILITY BENEFITS	2	0
6	4038406	07/22/2019	BRANDON J WICHERT	\$607.40	07/18/2019 07/24/2019	11	A	1 - INDEMNITY	TT - TEMPORARY TOTAL DISABILITY BENEFITS	1	0
7	4039000	07/29/2019	BRANDON J WICHERT	\$607.40	07/25/2019 07/31/2019	11	A	1 - INDEMNITY	TT - TEMPORARY TOTAL DISABILITY BENEFITS	1	0
8	4039562	08/05/2019	BRANDON J WICHERT	\$607.40	08/01/2019 08/07/2019	11	A	1 - INDEMNITY	TT - TEMPORARY TOTAL DISABILITY BENEFITS	1	0
9	4040177	08/12/2019	BRANDON J WICHERT	\$607.40	08/08/2019 08/14/2019	11	A	1 - INDEMNITY	TT - TEMPORARY TOTAL DISABILITY BENEFITS	1	0
10	4040771	08/19/2019	BRANDON J WICHERT	\$607.40	08/15/2019 08/21/2019	11	A	1 - INDEMNITY	TT - TEMPORARY TOTAL DISABILITY BENEFITS	1	0
11	4041365	08/26/2019	BRANDON J WICHERT	\$607.40	08/22/2019 08/28/2019	11	A	1 - INDEMNITY	TT - TEMPORARY TOTAL DISABILITY BENEFITS	1	0
12	4041894	08/30/2019	BRANDON J WICHERT	\$607.40	08/29/2019 09/04/2019	11	A	1 - INDEMNITY	TT - TEMPORARY TOTAL DISABILITY BENEFITS	1	0
13	4042520	09/09/2019	BRANDON J WICHERT	\$607.40	09/05/2019 09/11/2019	11	A	1 - INDEMNITY	TT - TEMPORARY TOTAL DISABILITY BENEFITS	1	0
14	4043163	09/16/2019	BRANDON J WICHERT	\$607.40	09/12/2019 09/18/2019	11	A	1 - INDEMNITY	TT - TEMPORARY TOTAL DISABILITY BENEFITS	1	0
15	4069789	08/26/2020	BRANDON WICHERT AND RBRS LEGAL GROUP, PLLC	\$40,000.00	08/17/2020 08/17/2020	11	I	1 - INDEMNITY	LS - LUMP SUM SETTLEMENT	0	0

Total Amount Paid \$49,718.40

Total Weeks 16

Total Days 0



ARGO GROUP

PAYMENT INQUIRY BY CLAIM NUMBER

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Brandon Wichert v. Review

Run By - D40AMK ON 08-SEP-20

Claim Num : 40-213624

Payment Code 2 - MEDICAL

Payment Description : ALL

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#	Chk/GR Num	Tran Dt	Payee/Payer Name	Amount Paid	Period Covered	TC	CHKITYP	TP	PD	WKS	DAY
1	4034703	06/05/2019	GENEX SERVICES INC	\$372.00	05/24/2019 05/31/2019	11	I	2 - MEDICAL	FM - FIELD CASE MANAGEMENT (NO CA CLMS W/ POL EFF >= 7/1/2010)	0	0
2	9033227	06/18/2019	ORAL AND MAXILLOFACIAL ASSO LL	\$170.10	05/21/2019 05/21/2019	11	B	2 - MEDICAL	XR - X-RAYS	0	0
3	4036080	06/21/2019	GENEX SERVICES INC	\$895.72	06/11/2019 06/18/2019	11	I	2 - MEDICAL	FM - FIELD CASE MANAGEMENT (NO CA CLMS W/ POL EFF >= 7/1/2010)	0	0
4	9034148	06/25/2019	MEDCOMP USA INC DBA MTI	\$97.65	05/29/2019 05/29/2019	11	B	2 - MEDICAL	DT - DENTIST'S INVOICE	0	0
5	9034532	06/27/2019	MEDCOMP USA INC DBA MTI	\$2,162.41	05/30/2019 05/30/2019	11	B	2 - MEDICAL	GS - GENERAL SURGEON'S INVOICE	0	0
6	9034531	06/27/2019	MEDCOMP USA INC DBA MTI	\$184.24	05/21/2019 05/21/2019	11	B	2 - MEDICAL	DT - DENTIST'S INVOICE	0	0
7	4038460	07/22/2019	GENEX SERVICES LLC	\$829.40	06/25/2019 07/17/2019	11	I	2 - MEDICAL	FM - FIELD CASE MANAGEMENT (NO CA CLMS W/ POL EFF >= 7/1/2010)	0	0
8	9038389	08/01/2019	MCBRIDE ORTHO HOSP	\$164.35	07/03/2019 07/03/2019	11	B	2 - MEDICAL	OS - OSTEOPATH'S INVOICE	0	0
9	9039758	08/13/2019	DUSTIN ROSENHAMER MD	\$253.80	07/25/2019 07/25/2019	11	B	2 - MEDICAL	GE - GENERAL & FAMILY PRACTICE PHYSICIAN'S INVOICE	0	0
10	9040359	08/19/2019	DIAGNOSTIC RADIOLOGY CONSULTAN	\$91.93	07/10/2019 07/10/2019	11	B	2 - MEDICAL	DI - DIAGNOSTIC TESTING	0	0
11	9040562	08/20/2019	PRIORITY CARE SOLUTIONS LLC	\$1,382.52	07/10/2019 07/10/2019	11	B	2 - MEDICAL	DI - DIAGNOSTIC TESTING	0	0
12	4041691	08/28/2019	GENEX SERVICES LLC	\$851.72	07/31/2019 08/22/2019	11	I	2 - MEDICAL	FM - FIELD CASE MANAGEMENT (NO CA CLMS W/ POL EFF >= 7/1/2010)	0	0
13	9041566	08/29/2019	MCBRIDE ORTHO HOSP	\$87.75	07/12/2019 07/12/2019	11	B	2 - MEDICAL	OS - OSTEOPATH'S INVOICE	0	0
14	4043990	09/24/2019	GENEX SERVICES LLC	\$842.92	09/16/2019 09/19/2019	11	I	2 - MEDICAL	FM - FIELD CASE MANAGEMENT (NO CA CLMS W/ POL EFF >= 7/1/2010)	0	0
15	4044521	09/30/2019	GENEX SERVICES LLC	\$1,238.24	07/24/2019 07/26/2019	11	I	2 - MEDICAL	FM - FIELD CASE MANAGEMENT (NO CA CLMS W/ POL EFF >= 7/1/2010)	0	0
16	9045841	10/10/2019	SKYLINE MEDICAL CENTER	\$5,403.14	05/17/2019 05/18/2019	11	B	2 - MEDICAL	HO - HOSPITAL - OUTPATIENT SERVICES/SURGICAL CENTERS	0	0
17	9046095	10/14/2019	DUSTIN ROSENHAMER MD	\$131.40	09/17/2019 09/17/2019	11	B	2 - MEDICAL	GE - GENERAL & FAMILY PRACTICE PHYSICIAN'S INVOICE	0	0
18	9048016	11/01/2019	NAVSHVILLE ACUTE TRAUMA	\$95.10	05/18/2019 05/18/2019	11	B	2 - MEDICAL	GE - GENERAL & FAMILY PRACTICE PHYSICIAN'S INVOICE	0	0
19	9056112	01/31/2020	MEDCOMP USA INC DBA MTI	\$52.35	05/29/2019 05/29/2019	11	B	2 - MEDICAL	DT - DENTIST'S INVOICE	0	0
20	9056604	02/06/2020	MEDCOMP USA INC DBA MTI	\$98.76	05/21/2019 05/21/2019	11	B	2 - MEDICAL	DT - DENTIST'S INVOICE	0	0

21	9056985	02/11/2020	MEDCOMP USA INC DBA MTI	\$2,491.59	05/30/2019 05/30/2019	11	B	2 - MEDICAL	GS - GENERAL SURGEON'S INVOICE	0	0
22	4056807	02/28/2020	BRANDON J WICHERT	\$46.26	05/18/2019 05/31/2019	11	I	2 - MEDICAL	RX - PHARMACY	0	0
23	4056809	02/28/2020	BRANDON J WICHERT	\$348.00	05/18/2019 05/19/2019	11	I	2 - MEDICAL	MI - MILEAGE	0	0
24	4056810	02/28/2020	BRANDON J WICHERT	\$45.00	05/18/2019 05/19/2019	11	I	2 - MEDICAL	OT - OTHER MEDICAL	0	0
25	9060363	03/18/2020	OMFS PHYSICIAN OF ATHENS	\$95.48	05/17/2019 05/17/2019	11	B	2 - MEDICAL	GE - GENERAL & FAMILY PRACTICE PHYSICIAN'S INVOICE	0	0
26	9060462	03/19/2020	DOVERSIDE EMERGENCY PHYS PLLC	\$233.23	05/17/2019 05/17/2019	11	B	2 - MEDICAL	EM - EMERGENCY PHYSICIAN'S INVOICE	0	0
27	9061510	03/27/2020	PRIORITY CARE SOLUTIONS LLC	\$102.87	05/17/2019 05/17/2019	11	B	2 - MEDICAL	DI - DIAGNOSTIC TESTING	0	0
28	9061511	03/27/2020	PRIORITY CARE SOLUTIONS LLC	\$193.07	05/17/2019 05/17/2019	11	B	2 - MEDICAL	DI - DIAGNOSTIC TESTING	0	0
29	9061946	04/06/2020	RADIOLOGY ALLIANCE PC	\$497.07	05/17/2019 05/17/2019	11	B	2 - MEDICAL	DI - DIAGNOSTIC TESTING	0	0
30	9070376	07/28/2020	INTEGRIS BAPTIST MED CTR	\$2,605.65	05/30/2019 05/30/2019	11	B	2 - MEDICAL	HO - HOSPITAL - OUTPATIENT SERVICES/SURGICAL CENTERS	0	0

Total Amount Paid \$22,063.72

Total Weeks 0

Total Days 0